

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**McDONALD'S USA, LLC, A JOINT EMPLOYER,
et al.**

and

**Cases 02-CA-093893 et al.
04-CA-125567 et al.**

**FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC, et al.**

ORDER¹

Respondent McDonald's USA, LLC filed a request for special permission to appeal (1) Administrative Law Judge Lauren Esposito's order granting the petitions to revoke the August 2017 subpoenas duces tecum served by the Respondent on Charging Parties Service Employees International Union (SEIU), Fast Food Workers Committee (FFWC), and Pennsylvania Workers Organizing Committee (PWOC), SEIU employee Kendall Fells, and non-party New York Communities for Change (NYCC), and (2) the judge's order and supplemental order requiring the Respondent to create and provide an expert report regarding the anticipated testimony of expert witness Chekitan Dev.

The request for special permission to appeal from the order and supplemental order regarding the creation of an expert report is granted, and on the merits we reverse the judge's ruling. As the judge acknowledged, the Board has not previously imposed such a requirement. In addition, we find that there is no demonstrated need for an expert report that cannot be met by alternate measures such as granting a continuance,

¹ The Board has delegated its authority in this proceeding to a three-member panel.

if appropriate, after the Respondent's expert has testified, despite the inherent delay that would result. Therefore, we find that the judge abused her discretion in requiring an unwarranted discovery procedure in this case.

The Respondent's request for special permission to appeal from the judge's order granting the petitions to revoke the Respondent's August 2017 subpoenas duces tecum is denied.²

Dated, Washington, D.C., January 16, 2018

MARVIN E. KAPLAN, CHAIRMAN

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

² Chairman Kaplan and Member Emanuel view the request as controlled by the prior Board decision denying the Respondent's request to appeal the judge's prior order on essentially the same subpoena issue. See *McDonald's USA, LLC*, 363 NLRB No. 144, slip op at 1-2, 3 fn. 5, and 11-19 (2016). They express no opinion whether that request was correctly denied.